

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

COREY TERRELL GRAY,

Defendant.

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No. 10-CR-30234-WDS

MEMORANDUM & ORDER

STIEHL, District Judge:

Before the Court is defendant's pro se motion seeking to have the Court enforce an agreement he believed existed at the time of his sentencing that the government would, within one year of sentencing, file a motion for reduction due to substantial post-sentencing cooperation pursuant to Fed. R. Crim P. 35 (Doc. 43). The defendant does not contend that he has, indeed, cooperated, or that the cooperation was substantial, but does state that he has written his trial attorney and counsel for the government several times to no avail. In addition, the defendant has filed a motion for status (Doc. 45).

The Seventh Circuit has held that the decision to file a Rule 35 motion rests with the government, and that rule "nowhere allows a defendant to force the government to seek a Rule 35(b) reduction on his behalf." *United States v. Obeid*, 707 F.3d 898, 901 (7th Cir. 2013). However, the Court in *Obeid* provided: "if the government refuses to follow through on a promise to file a Rule 35(b) motion, and that refusal is 'based on an unconstitutional motive' or is 'not rationally related to any legitimate Government end,'" the defendant must seek relief under 28 U.S.C. § 2255. 707 F.3d at 901.

Therefore, the Court **DENIES** the motion to compel the government to file a Rule 35(b) motion as the Court is without authority to grant defendant the relief he seeks. The

Court also **DENIES as moot** the motion for status. (Docs. 43 and 45). If the defendant believes that the government's failure to file a Rule 35(b) motion is premised on an unconstitutional motive, defendant must file a civil habeas petition seeking to vacate, set aside or correct sentence, pursuant to 28 U.S.C. §2255.

IT IS SO ORDERED.

DATED: 05 April, 2013

/s/ WILLIAM D. STIEHL
DISTRICT JUDGE